

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

THE LEARNING INTERNET, an Oregon
corporation,

CV 07-227-AC

ORDER

Plaintiff and
Counterclaim-Defendant,

v.

LEARN.COM, INC., a Delaware
corporation,

Defendant and
Counterclaim-Plaintiff.

MARSH, Judge.

On March 6, 2008, Magistrate Judge Ashmanskas filed a Findings and Recommendation (#54) recommending: (1) Defendant Learn.Com, Inc.'s Motion to Dismiss (#18) Plaintiff the Learning

Internet's claims regarding the '801 registration be granted; and (2) Plaintiff's Motion to Dismiss (#27) Defendant's counterclaims be denied. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When no objections are filed, the district court may assume the correctness of the Magistrate Judge's findings of fact and decide the motion on the applicable law. See Campbell v. United States District Court, 501 F.2d 196, 206 (9th Cir. 1974).

When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

1. Defendant's Motion to Dismiss (#18).

Plaintiff has not filed any objections to the Magistrate Judge's Findings and Recommendation that Defendant's Motion to Dismiss claims regarding the '801 registration be granted. I have reviewed the applicable law and find no error in the Magistrate Judge's ruling. Accordingly, I ADOPT the Findings & Recommendation (#54) as to Defendant's Motion to Dismiss, GRANT the Motion, and DISMISS Plaintiff's claims regarding the '801 registration.

2. Plaintiff's Motion to Dismiss (#27).

Plaintiff has filed timely objections to the Magistrate Judge's Findings and Recommendation that Plaintiff's Motion to Dismiss certain of Defendant's counterclaims be denied. I have, therefore, given the file as to this motion a *de novo* review. I find no error in the Magistrate Judge's ruling. I also find the Magistrate Judge made clear that his Findings & Recommendation did not preclude Plaintiff from seeking attorneys' fees and costs limited to those Plaintiff incurred directly as a result of Defendant's faulty pleading as to Plaintiff's claim regarding Registration '801. Accordingly, I ADOPT the Findings and Recommendation as to Plaintiff's Motion to Dismiss and DENY the Motion.

IT IS SO ORDERED.

DATED this 6 day of May, 2008.

 /s/ Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge